

REMARKS

In view of the above amendments and the following remarks, reconsideration and allowance of this application are respectfully requested. Claims 1-41 are pending in this application, with claims 1, 18 and 25 being independent. Claims 1 and 5 have been amended and claims 25-41 have been added.

In the office action dated November 21, 2003, the Examiner indicates that the Applicant filed a Continued Prosecution Application (CPA). Applicant respectfully notes that a CPA was not filed. Rather, Applicant filed a Request for Continued Examination (RCE) on August 25, 2003.

The Examiner has rejected claims 1-2 and 4-24 as anticipated by U.S. Patent No. 4,844,064 (Thimsen) and claim 3 as obvious over Thimsen. Further, the Examiner has rejected independent claims 1 and 18 as anticipated by U.S. Patent No. 4,167,944 (Banko). Applicant respectfully requests reconsideration and withdrawal of these rejections.

Independent claim 1 is directed to a cutting instrument that includes an outer member having an opening at least partially bounded by a cutting edge and a helical knife coupled to the outer member for rotation relative to the outer member. The helical knife has an edge configured to slice into tissue. The edge of the helical knife extends through the opening a sufficient amount to form an outer periphery of the cutting instrument.

Neither Thimsen nor Banko describes or suggests at least the claimed cutting instrument having an edge of a helical knife extending through an opening of an outer member to form an outer periphery of the cutting instrument. In Banko, as best seen in figures 4-6, no edge of flutes 37b, which the Examiner equates with the claimed helical knife, extends through opening 64 to form an outer periphery of the tool. Rather, the outer periphery is formed by the surface of nose cone 62. Similarly, in Thimsen, no edge of helical cutter blade 18, which the Examiner equates with the claimed helical knife, extends through openings 16 and 17 to form an outer periphery of the tool. Rather, the outer periphery is formed by the peripheral wall 51. Accordingly, Applicant submits that claim 1, and the claims that depend therefrom, are patentable over Thimsen and Banko for at least this reason.

Independent claim 18 is directed to a method of cutting that includes slicing into tissue with a helical knife to draw tissue proximally toward a cutting portion, where the helical knife has a slicing edge extending through an opening at least partially bounded by the cutting portion; and cutting the tissue with the cutting portion.

Neither Thimsen nor Banko describes or suggests at least slicing into tissue with a helical knife to draw the tissue proximally toward a cutting portion and cutting the tissue with the cutting portion. Both references describe a cutting portion that includes an opening with a cutting edge that cooperates with a helical blade to cut tissue using a shearing action between the helical blade and the cutting edge. However, neither of these references describe or suggest drawing tissue proximally toward the cutting portion by slicing into the tissue with the helical blade. Banko explicitly uses an "[e]vacuation force applied through conduit 20 and the central passage to draw tissue into the opening 64" of the cutting portion so that the tissue can be cut. Banko, Col. 3, Lines 48-49. Thimsen also apparently uses an evacuation force to draw tissue into openings 16 and 17. Thimsen, Col. 7, Lines 19-21 ("Suction is applied through the passage 20 so as to remove the cut or severed material."). Accordingly, Applicant submits that claim 18, and the claims that depend therefrom, are patentable over Thimsen and Banko for at least this reason.

Enclosed is a \$306.00 check for excess claim fees. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

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